

mailing cards and leaflets accompanying the article, were false and misleading. The statements represented and suggested that the article was effective to increase vitality, to prevent "flu," colds, and other infections, to lessen fatigue, to increase resistance to disease, to relieve nervousness, to improve complexion, to build blood, and to implant and maintain a lactic acid bacterial culture in the intestines. The article was not effective for such purposes.

DISPOSITION: MacDonald Laboratories, Inc., claimant, having filed a motion for the removal of the case to the District of North Dakota, the court entered an order, on November 24, 1952, directing such removal. Thereafter, since the claimant failed to make any further appearance in the case and since it appeared that default judgment could not be entered in the District of North Dakota, an order was entered by the United States District Court for the District of North Dakota, transferring the case back to the Southern District of Florida. Following such transfer, the United States District Court for the Southern District of Florida entered a default decree of condemnation and destruction on September 4, 1953.

4096. Misbranding of Matte (maté). U. S. v. 53 Cylinders * * *. (F. D. C. No. 34162. Sample No. 44418-L.)

LIBEL FILED: November 20, 1952, District of Massachusetts.

ALLEGED SHIPMENT: On or about July 22, 1952, by David Komisar & Son, Inc., from New York, N. Y.

PRODUCT: 53 cylinders of *Matte* (maté) at Boston, Mass. Examination showed that the product was maté.

LABEL, IN PART: (Cylinder) "Gold Brande Matte The Energizing Brazilian Tea Nature's Golden Drink delicious stimulating * * * Net Weight ½ Pound."

NATURE OF CHARGE: Misbranding, Section 502 (a), the label statements, namely, "The Energizing Brazilian Tea * * * is prepared identically as is common tea * * * energizing * * * supplies vitamins and minerals * * * tonic effects * * * its natural dietetic properties aid the body to throw off excess uric acid * * * supplies quick energy and helps to resist unusual mental and physical strain," were false and misleading since the article was not tea, did not provide nutritionally significant amounts of vitamins and minerals, and was not effective in the treatment of the conditions stated and implied.

The article was alleged also to be misbranded under the provisions of the law applicable to foods, as reported in notices of judgment on foods.

DISPOSITION: David Komisar & Son, Inc., appeared as claimant and filed an answer denying that the product was misbranded. Thereafter, upon agreement of the parties, the case was removed for trial to the United States District Court for the Eastern District of New York. Interrogatories subsequently were filed by the Government on April 15, 1953. Upon failure of the claimant to answer the interrogatories, a motion was filed by the Government to strike the claimant's answer to the libel and for a default decree of condemnation. No opposition to such motion having been interposed, the court, on September 4, 1953, granted the motion and entered a default decree of condemnation and destruction.

4097. Misbranding of Azalias Medicine. U. S. v. 100 Bottles * * *. (F. D. C. No. 34668. Sample No. 19903-L.)

LIBEL FILED: February 18, 1953, District of Minnesota.